In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

Nos. 483, 484

LAWRENCE SPEISER, *Appellant,* vs. JUSTIN A. RANDALL, as Assessor of Contra Costa County, State of California, *Appellee.*	No. 483
DANIEL PRINCE, *Appellant,* vs. CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, *Appellee.*	No. 484

APPELLANTS' CONSOLIDATED OPENING BRIEF.

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OPINIONS BELOW.

In No. 483, the trial court, consisting of the five Superior Court Judges of the county in which the action was filed, sitting en banc, rendered a written

[1]The two cases were consolidated by order of this Court (R. 71).

opinion, which is unreported, and which does not appear in the record, but is attached as Appendix A to the Jurisdictional Statement on file herein.

In No. 484, the opinion of the trial court, also unreported, appears in the record at R. 50-59. The opinions of the court below in both cases (R. 22, 64) are reported at 48 Cal. (2d) 903 and 472, 311 P. (2d) 546 and 544; the opinions of the dissenting justices in the court below (R. 23, 67) are reported in 48 Cal. (2d) at 904 and 475, 311 P. (2d) at 547 and 546.

In the cases at bar, both the majority and dissenting opinions in the court below cite reliance upon the reasons set forth in their respective opinions in the case of *First Unitarian Church v. County of Los Angeles*, on file with this Court on a petition for a writ of certiorari as October Term 1957, No. 382. The opinion of the court below in the *First Unitarian Church* case is set forth in the record of that case on page 35, and is reported at 48 Cal. (2d) 419, 311 P. (2d) 508. There were two dissenting opinions in the court below; one by Justice Traynor, concurred in by Chief Justice Gibson; the other by Justice Carter. The opinions of the dissenting justices in the court below in the *First Unitarian Church* case are in the record of that case on pages 57 and 65, and are reported in 48 Cal. (2d) at 443 and 451, 311 P. (2d) at 522 and 527.

JURISDICTION.

These are reviews of judgments (R. 23, 67) in civil cases, of the Supreme Court of the State of California, entered on April 24, 1957 (R. 22, 64). Timely notices of appeal were filed with the Supreme Court of the State of California on May 27, 1957, and enlargements of time to file jurisdictional statements were granted until September 24, 1957, by the Chief Justice of that court and filed therewith on July 10, 1957.

A consolidated jurisdictional statement for both cases, pursuant to Rule 15(3) of the Rules of the Supreme Court, was filed on September 19, 1957. (R. Cover Page.) An order noting probable jurisdiction and consolidating the cases was made on November 25, 1957. (R. 71.)

The jurisdiction of this Court rests on 28 U.S.C. Sec. 1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Only the citations of the constitutional and statutory provisions are included here. The full text is set forth in Appendix A, attached hereto. The citations are as follows:

California veterans property tax exemption:

California Constitution, Art. XIII, Sec. 1¼:

California constitutional amendment denying all tax exemptions to advocates of the proscribed doctrines:

California Constitution, Article XX, Sec. 19(b);

Implementing legislation requiring a non-disloyalty declaration as a condition for receiving property tax exemptions:

California Revenue and Taxation Code, Sec. 32 (Calif. Stats. 1953, c. 1503, p. 3114, Sec. 1);

and corporation income tax exemptions:

California Revenue and Taxation Code, Sec. 23705 (Calif. Stats., 1953, c. 1503, p. 3115, Sec. 2);

United States Constitution, First Amendment;

United States Constitution, Fourteenth Amendment, Sec. 1;

United States Constitution, Article VI, Clause 2.

QUESTIONS PRESENTED FOR REVIEW.

In 1952 Section 19 of Article XX of the Constitution of the State of California, was adopted which denies any tax exemption to advocates of the overthrow of the government of the United States by force, violence, or other unlawful means and to advocates of the support of a foreign government against the United States in the event of hostilities.

In the following year, the legislature adopted Section 32 of the Revenue and Taxation Code of California, requiring applicants (organizational or in-

dividual) for property tax exemptions (with the exception of applicants for the householders' exemption) to sign a declaration that they do not advocate the proscribed doctrines.[2]

The questions presented are whether these enactments, on their faces and as construed and applied, are unconstitutional in being repugnant to the United States Constitution in the following respects:

1. In violating the due process clause of the Fourteenth Amendment and through it, the First Amendment to the United States Constitution in abridging freedom of speech and assembly:

(a) By infringing on these freedoms while bearing no reasonable relationship to any evil sought to be controlled by the enactments nor any reasonable relationship to the public welfare;

(b) By infringing on these freedoms without any showing of a clear and present danger existing by reason of the receipt of tax exemptions by advocates of the proscribed doctrines or by those who, for reason of conscience, refuse to sign a declaration that they do not so advocate;

(c) By abridging these freedoms by imposing a prior restraint in that the language of these acts are vague and uncertain in their terms.

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[2]At the same time the legislature adopted Revenue and Taxation Code Section 23705, requiring the same declaration on any return filed by any corporation claiming a tax exemption. These two sections of the Revenue and Taxation Code are the only ones which have been passed requiring the non-disloyalty declaration as a condition for tax exemption.

2. By violating the due process clause of the Fourteenth Amendment to the United States Constitution in imposing an unconstitutional condition upon the enjoyment of a privilege in requiring relinquishment of the right to freedom of speech and assembly, as a condition for receiving a tax exemption.

3. By violating the due process clause of the Fourteenth Amendment of the Constitution of the United States, in taking away liberty and property without trial or hearing, accusation, right to confrontation, right to cross-examination, and in subverting the presumption of innocence, and altering the rules of evidence.

4. By violating the equal protection clause of the Fourteenth Amendment to the United States Constitution in arbitrarily and discriminatorily denying tax exemptions to the appellants while granting them to all others in similar circumstances.

5. By violating the equal protection clause of the Fourteenth Amendment to the United States Constitution in unreasonably and discriminatorily requiring a declaration of non-advocacy of the proscribed doctrines for only certain property tax exemptions and the corporate income tax exemptions, but not for the householders' and all other tax exemptions.

6. By violating the supremacy clause of the Constitution in attempting to regulate and restrict sedition, a field entirely within the province of the federal government, and which the Congress of the United States, by legislative enactments, has preempted and wholly occupied.

STATEMENT OF THE CASE.

The facts in each case are not in dispute and are based on stipulations of facts introduced in the respective trial courts. (R. 18, 45.) Appellants are both veterans of World War II, and as such are qualified for the veterans property tax exemption, pursuant to the provisions of Section 1¼ of Article XIII of the California Constitution, which provides that every resident of the State who is honorably discharged from one of the armed forces shall receive a property tax exemption in the amount of $1,000, provided that neither he nor his spouse own property in excess of $5,000. (R. 18, 45.) The appellee in No. 483 is the Assessor of the County in which the appellant lived. (R. 19.) The appellee in No. 484 is the municipality in which the appellant was living and maintained a place of business. (R. 45, 47.)

Both appellants in the spring of 1954 filed duly executed applications for the veterans property tax exemption with the exception that in each case they struck out and refused to execute that part of the tax form which contained a declaration as to non-advocacy of the doctrines proscribed by Article XX, Section 19(b) of the California Constitution and implemented by Section 32 of the Revenue and Taxation Code. (R. 19, 47.) The appellees in each case denied the appellants' applications for the veterans property tax exemption "upon the sole ground that the said application for the veterans tax exemption did not contain the declaration as required" by Section 32 of the Revenue and Taxation Code. (R. 20, 48.)

The language in issue in the applications arose from the passage on November 4, 1952 of Section 19(b), Article XX of the California State Constitution denying all tax exemptions to advocates of the forceful overthrow of the United States Government or of the support of a foreign government against the United States in the event of hostilities, and the passage in the following year by the state legislature of Section 32 of the Revenue and Taxation Code, which required that all applicants for property tax exemptions (with the exception of applicants for householders' exemptions) sign a declaration of non-advocacy as a condition for receiving property tax exemptions. (R. 18, 19, 46, 47.)

After his application was denied, the appellant in No. 483 filed suit for declaratory relief in the Superior Court of Contra Costa County, pursuant to California law. (R. 3.) All five Superior Court Judges of that county, for the first time in its history, sat en banc on the case and ruled unanimously that both the Constitutional amendment and Revenue and Taxation Code Section 32 were unconstitutional in violating the free speech and due process provisions of the Federal Constitution. They also ruled that Section 32 violated the equal protection clause of the Fourteenth Amendment, since the declaration of non-advocacy was not required from all applicants for all exemptions. (R. 10-17.)

In the second case at bar, after the application of the appellant in No. 484 was denied, he paid his taxes under protest, pursuant to the provisions of Califor-

nia law (Revenue and Taxation Code Sections 5136-5137) for testing the validity of the tax assessed. (R. 48-49.) Thereafter, as provided by California law (Revenue and Taxation Code Sections 5138-5139), the appellant in No. 484 filed suit for recovery of taxes paid under protest and for declaratory relief. (R. 48, 49.) The trial court judge in No. 484 ruled against the constitutional arguments raised by the appellant and upheld both the constitutional provision and the Revenue and Taxation Code section. (R. 50-62.)

On appeal to the California Supreme Court, the court below by 4 to 3, reversed the judgment of the five Contra Costa Superior Court Judges in No. 483 and affirmed the San Francisco Superior Court judgment in No. 484. The holdings against the appellants in both cases were on the federal grounds which had been raised by the appellants throughout the proceedings. Chief Justice Gibson, Justice Traynor, and Justice Carter dissented. (R. 23, 67.) Both the majority and dissenting opinions relied upon the reasons set forth in their respective opinions in the case of *First Unitarian Church of Los Angeles v. County of Los Angeles* on certiorari, October Term 1957, No. 382.

SUMMARY OF THE ARGUMENT.

California adopted Section 19(b), Article XX of the State Constitution denying all tax exemptions to advocates of the forceful overthrow of the United States Government or the support of a foreign government against the United States in the event of hostilities,

and the State Legislature attempted to implement the constitutional provision by requiring all applicants for property tax exemptions (with the exception of householders' exemption) to sign a declaration of non-advocacy as a condition for tax exemptions.

This Court in the past has upheld laws and declarations of non-advocacy only where there existed some great danger or overriding consideration deemed sufficient to warrant an infringement on First Amendment freedoms, such as maintaining the integrity and efficiency of the public service, *Garner v. Board of Public Works*, 341 U.S. 716, or in attempting to prevent the danger to interstate commerce posed by political strikes, *American Communications Assn. v. Douds*, 339 U.S. 382. In no case has this Court allowed an abridgement of First Amendment rights without first satisfying itself that the nature of the evil perceived by the legislature is of sufficient magnitude to warrant the infringement.

The majority below in construing the provisions here in issue ruled that the limitation imposed by the constitutional amendment "is not a limitation on mere belief, but is a limitation on action. . . . Advocacy constitutes action and the instigation of action, not mere belief or opinion." Under this interpretation, all advocacy is penalized, whether or not it presents a clear and present danger, since the majority only recognizes two categories, belief and action, and it throws advocacy into the category of action.

The majority below stated the primary purpose of the enactments was to protect the state's "revenue

raising program from subversive exploitation." There were no legislative hearings or findings that there were any dangers to the revenue raising program of the state. In contrast to this situation, Congress collected a great mass of data showing the danger to interstate commerce posed by political strikes in *American Communications Assn. v. Douds*, 339 U.S. 382. Similar denials of privileges for refusal to sign non-disloyalty declarations, were struck down in *Danskin v. San Diego Unified School District*, 28 Cal. (2d) 536, involving use of a public auditorium, and *Lawson v. Housing Authority of Milwaukee*, 270 Wisc. 269, 70 N.W. (2d) 605, involving public housing tenancy.

The majority below states that one of the purposes in granting tax exemptions is to maintain the loyalty of the people. Loyalty may not be promoted at the expense of the First Amendment, *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 633.

The real purpose of the provisions here involved is to penalize advocates of the proscribed doctrines by "hitting such persons or organizations in the pocketbook". It is improper to infringe on First Amendment rights for such a purpose.

Even though a tax exemption is a privilege, the arbitrary denial of an exemption, conditioned on non-advocacy, results in an infringment on freedom of speech—albeit an indirect one. Such a condition is an unconstitutional condition, *Frost v. Railroad Commission of California*, 271 U.S. 583.

The Constitutional provision, being self-executing, and by its terms covering all tax exemptions in the

state, presents a substantial infringment on free speech affecting the rights and liberties of all California residents and organizations since almost everyone in the state receives some type of tax exemption.

Denying a tax exemption is not a reasonable means of protecting the state or nation against violent overthrow or conquest, nor, of protecting the state's revenue raising program. All of the various exemptions granted by the State of California have different and varied purposes. There is not one, single overriding purpose which has any reasonable relationship to the provisions here in issue.

Utilizing an expurgatory oath to determine which tax exemptions should be denied is an improper method, since there is absolutely no evidence that any group of exemptees advocate the proscribed doctrines. Although test oaths may be required under very limited circumstances from a limited group, such as government employees or labor leaders, to determine qualifications, they may not be utilized on the populace as a whole, since they subvert the presumption of innocence. It is a fallacious inference under such conditions to assume that a failure or refusal to sign a declaration of non-advocacy is any proof at all of advocacy.

Section 32, in excluding householders from filing declaration of non-advocacy violates the equal protection clause, because the constitutional amendment covers all tax exemptions. The legislature may not require such declarations from some tax exemptees but not all. The effect of the provisions in issue is to

deny any exemption to aliens, since no alien can truthfully say he does not advocate the support of a foreign government against the United States in the event of hostilities. Such a denial of tax exemption, solely because of alienage violates the equal protection clause. *Truax v. Raich*, 239 U.S. 23.

Penalizing peacetime advocacy of the support of a foreign government against the United States in the event of hostilities violates the supremacy clause of the constitution in attempting to regulate and restrict sedition, a field entirely within the province of the federal government, and which the Congress of the United States, by legislative enactment, has preempted and wholly occupied, 18 U.S.C.A. 2381, et seq.; *Pennsylvania v. Nelson*, 350 U.S. 497.

ARGUMENT.

I.

THE CONSTITUTIONAL AMENDMENT AND SECTION 32 OF THE REVENUE AND TAXATION CODE ON THEIR FACES, AND AS CONSTRUED AND APPLIED, VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IN ABRIDGING FREEDOM OF SPEECH AND ASSEMBLY.[3]

A. Freedom of Speech and Assembly May Be Infringed Only to Prevent Some Substantial Evil Which Presents a Clear and Present Danger, or for Some Other Equally Overriding Consideration.

It is well established to the point of redundancy that the freedoms set forth in the First Amendment

[3]For ease of reference, the State Constitution provision will be referred to as Article XX or the Constitutional amendment, al-

of the United States Constitution are protected under the due process clause of the Fourteenth Amendment against infringement by the states. (*Thomas v. Collins,* 323 U.S. 516, 530; *DeJonge v. Oregon,* 299 U.S. 353, 364.)

General legislation by states will be upheld, where the legislative bodies or the people had a "rational basis" for acting, "but freedoms of speech and of press, of assembly, of worship, may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect." (*West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 639.)

The cases here in issue involve not only the disqualification for tax exemption based on non-advocacy, but also, a declaration of non-advocacy as a means of implementation. This Court in the past has upheld such provisions only where there existed some grave danger or overriding consideration deemed sufficient to warrant an infringement on First Amendment freedoms, such as maintaining the integrity and efficiency of the public service (*Garner v. Board of Public Works,* 341 U.S. 716) or in attempting to prevent the danger to interstate commerce posed by political strikes. (*American Communications Association v. Douds,* 339 U.S. 382.) Of a similar nature is *Adler v.*

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though we are referring to Section 19(b), Article XX of the Constitution of the State of California. The State Statute will be referred to as Section 32.

Board of Education, 342 U.S. 485, which involves a New York State loyalty program for public school teachers. The *Adler* case, along with most of the state cases cited by the majority below, still falls under the general rule that an employing governmental body, in order to preserve the integrity of the public service, may properly limit an employee's freedom of advocacy or membership in certain organizations, as an incidental effect in setting qualifications for employment. However, this Court has held that even that objective is not sufficient to sustain a law which clearly crosses over the line of demarcation set by the due process clause and which punishes the "innocent with the guilty". (*Wieman v. Updegraff,* 344 U.S. 183.)

This Court succinctly stated the task of the courts in such cases in *American Communications Association v. Douds,* 339 U.S. 382, at p. 399 when it said:

> "When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional partial abridgment of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented."

In no case has this Court allowed an abridgment of the First Amendment without first satisfying itself that the nature of the evils perceived by the legislatures is of sufficient magnitude to warrant the infringment. These cases go no further; the evil is examined, whether it be in the area of political strikes, education, or public service, and the necessary infringement of

First Amendment rights is allowed, *but only to the extent absolutely necessary to meet the evil.*

B. Free Speech Is Infringed Here Under the Interpretation of the Majority Below in Holding That All Advocacy of the Proscribed Doctrines May Be Penalized.

This Court has just recently examined the field of advocacy and free speech in *Yates v. United States*, 354 U.S. 298. In that case this Court said (at p. 318):

> ". . . We are thus faced with the question of whether the Smith Act prohibits advocacy and teaching of forcible overthrow as an abstract principle, divorced from any effort to instigate action to that end, as long as such advocacy or teaching is engaged in with evil intent. We hold that it does not."

The decision by the court below was made prior to the decision of this Court in the *Yates* case. However, this Court's decision in *Yates* did not purport to set forth new law, but merely to reemphasize the dividing line between speech which may be penalized and speech which may not. The majority in the court below displayed a complete lack of understanding as to where the line should properly be drawn, which is clearly reflected in its statement in the majority opinion of the companion case, *First Unitarian Church v. County of Los Angeles*, in which it states:[4]

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[4]Since both the majority and dissenters in the cases at bar cite reliance on their reasons set forth at length in their respective opinions in the case of *First Unitarian Church v. County of Los Angeles* (O.T. 1957, No. 382) our analysis of the reasoning of the court below will be with respect to the *First Unitarian Church* opinions rather than to the relatively short memorandum opinions

" . . . In the present case it is apparent that the limitation imposed by Section 19 of Article XX as a condition of exemption from taxation, *is not a limitation on mere belief but is a limitation on action*—the advocacy of a certain proscribed conduct. What one may merely believe is not prohibited. It is only advocates of the subversive doctrines who are affected. *Advocacy constitutes action and the instigation of action, not mere belief or opinion. . . .*" (R. No. 382, p. 47.) (Emphasis added.)

It is evident that the majority below has failed to understand the distinction which this Court has drawn between advocacy which may be penalized—(not because advocacy has been magically transformed into action)—and advocacy which may not. Advocacy is not action, nor has it ever been so held by this Court. Even *Gitlow v. New York,* 268 U.S. 652, cited by the majority of the court below as authority for the proposition that advocacy constitutes action, does not so hold, as this Court pointed out recently in *Yates v. United States,* supra. The impropriety of the construction given by the majority below was clearly demonstrated by the dissenters. Justice Traynor, writing for himself and Chief Justice Gibson stated:

" . . . The state provisions in question penalize advocacy in a totally different context from that in the *Dennis* case. The penalty falls indiscriminately on all manner of advocacy, whether it be a

in the cases at bar. Accordingly, all references to the opinions of the court below will be to the opinions in the *First Unitarian Church* case and will be referenced to the record in *that* case, e.g., R. No. *382*, p. *35*.

call to action or mere theoretical prophesy that leaves the way open for counter-advocacy by others. Moreover, with regard to advocacy of support of a foreign government, the state provisions penalize not only advocacy during actual hostilities but also advocacy during peacetime of action during hostilities that may occur, if at all, in the remote future. . . ." (R. No. 382, p. 60.)

The majority below, it is true, does discuss the case of *Dennis v. United States*, 341 U. S. 494, but it misconstrued this Court's holding in that case and the test to be applied. In discussing the advocacy proscribed by the Smith Act, the majority below stated:

" . . . It must be said that *such advocacy from whatever source poses a threat to our government,* and that the gravity of the evil *is not to be materially* discounted by its improbability from the meaning of the test employed in the Dennis case. . . ." (Emphasis added.) (R. No. 382, p. 53.)

It is evident that the majority of the court below, for all intents and purposes, discards the clear and present danger doctrine completely. There is to be no looking at circumstances. It is the advocacy *per se* that presents a danger.

The construction of "advocacy" given by the majority below is no narrow one. It draws the line at mere belief. Discussion or attempts to persuade all fall within the ban, since the majority only recognizes two categories, "belief" and "action". The majority throws speech—any kind of speech—into the same pot with "action". (cf. *Butler v. Michigan*, 352 U.S. 380.)

It well may be that some advocacy, as well as some other types of speech, can be prohibited or penalized—not, however, because advocacy is semantically transformed into conduct. Instead, it is because a particular advocacy or speech presents some clear and present danger of bringing about some substantial substantive evil which the state has a right to prevent and from which the "degree of imminence is extremely high". (*Bridges v. California*, 314 U.S. 252, 263.)

This rule even applies to the advocacy of such doctrines as the overthrow of the government by force and violence or the support of a foreign government against the United States in the event of hostilities. Some advocacy of the violent overthrow of the government or of any other crime may be prohibited, or penalized but some may not without running afoul of the First Amendment. The dividing line (and drawing it is admittedly a difficult problem) is whether the advocacy constitutes an incitement to immediate or probable action. As Justice Jackson stated in his concurring opinion in *United States v. Dennis*, 391 U.S. 494, at p. 572:

> "Of course, it is not easy to distinguish teaching or advocacy in the sense of incitement from teaching or advocacy in the sense of exposition or explanation. It is a question of fact in each case."

Advocacy of the forceful overthrow of our government or the support of a foreign government in the event of hostilities probably is, and properly so, abhorred by most of our citizenry. But advocacy of these

or any other doctrines, is speech, pure and simple. If we accept the majority's below classification that any "advocacy" may be prohibited, whether or not there is any likelihood or probability that it will be acted upon—then we have placed the control and regulation of speech in the same category as the control and regulation of action. This is something which the First Amendment, as interpreted by this Court, holds may not be done. A village radical in the village square can still exhort his fellow townsmen to overthrow the government or march on the town hall, if it is evident from the surrounding circumstances that no one is taking him seriously or will be incited to action.

C. There Is No Evidence of Any Danger to Any Legitimate Interest of the State Justifying Infringement Upon Free Speech.

1. No danger of subversive exploitation of the state revenue raising program.

The majority opinion in the court below states what it conceives to be the major purpose of the provisions here in issue as follows:

> "It may properly be said that the primary purpose of the people of the state in the enactment of section 19 of article XX was to provide for the protection of the revenues of the state from impairment by those who would seek to destroy it by unlawful means." (R. No. 382, p. 41.)

The court below paraphrases this at a later point as being "(t)he interest of the state in protecting its revenue raising program from subversive exploitation". (R. No. 382, p. 51.)

These statements leave something to be desired in the realm of clarity and unambiguity. One possible meaning is that the purpose of the provision is to prevent violent revolution or conquest of the country by a foreign power, since presumably either event would result in an impairment to the revenue raising program of the state. However, if that is the supposed danger, then, of course, there is the very real due process objection (to be discussed, infra,[5]) as to whether the means chosen i.e. denial of tax exemption, is related in any reasonable way to the end sought, i.e. preventing revolution or conquest.

It would appear in any case that there should be some evidence before the legislature or the court of a danger (of some kind or another) to the revenue raising program of the state requiring protection "from impairment by those who would seek to destroy it by unlawful means."

When these provisions were presented to the legislature, there was no consideration, nor even any statement of the evils sought to be met by the constitutional amendment. There were no legislative hearings or findings. There has not even been any charge that any tax exempt group or individual advocated the proscribed doctrines. Therefore the legislative objective in passing the Constitutional amendment involved here must be left to conjecture.

In contrast to this situation, this Court, in *American Communications Association v. Douds*, 339 U.S.,

[5]See Section II of this brief.

p. 493, pointed to the great mass of data collected by Congress showing the danger to interstate commerce posed by political strikes. No similar evidence of any danger to California's revenue program was presented or alluded to by the majority below. Although the majority purported to apply the "clear and present danger" test, the opinion is devoid of any indication of the existence or magnitude of a threat of subversive exploitation of the state revenues.

In *Douds,* it was pointed out that merely because the court upheld the oath there, did not mean that such an oath can be constitutionally exacted from everyone under any and all circumstances. (339 U.S. at p. 403.) It carefully limited its holding to the situation where advocates of certain doctrines *by reason of their position* clearly presented a great danger to the country. Just as in *Dennis v. United States,* 341 U.S. 494, the danger arose *not* from the advocacy of the proscribed doctrines, but from a *combination* of two factors, i.e., that advocates of the proscribed doctrines were also in extremely powerful and sensitive positions, and it was this combination which warranted preventive action by the community. This was clearly spelled out in *Douds,* 339 U.S. at p. 403, where the court said:

> ". . . The 'discouragements' of Sec. 9(h) proceed not against the groups or beliefs identified therein, *but only against the combination of those affiliations or beliefs with occupancy of a position of great power over the economy of the country.* Congress has concluded that substantial harm, in

the form of direct positive action, may be expected from *that combination. . . .*" (Emphasis added.)

There have been several cases in various state courts which have reaffirmed the principle that there must be a showing of danger to some substantial interest of the community before there may be a valid inquiry as to whether a person advocates certain proscribed doctrines or belongs to any proscribed organization.

In California, such a case had previously gone to the State Supreme Court, which struck down an oath similar to a portion of the oath here involved under analogous circumstances. The case is *Danskin v. San Diego Unified School District,* 28 Cal. (2d) 536 (1946), which arose under the California Civic Center Act. The Act provided that school boards grant permission to use the school facilities to civic organizations, but barred their use by individuals or organizations advocating the forceful overthrow of the present form of government of the United States or of the State. To implement this law, the San Diego School Board adopted a resolution requiring that all applicants for the use of school auditoriums sign an oath, which stated, *inter alia:*

> "I do not advocate and I am not affiliated with any organization which advocates or has as its object or one of its objects the overthrow of the present Government of the United States or of any State by force or violence, or other unlawful means".

The California Supreme Court in that case held that the oath condition imposed was unconstitutional

on the grounds that even if an organization seeking to use the auditorium did in fact advocate these doctrines, *there was no showing that the use of the auditorium would in any way endanger the safety of the community.*

There the State Supreme Court held that the rights of even advocates of the forceful overthrow of the government could not be infringed in the absence of a clear and present danger and in a manner unrelated to protecting the security of the community.

Likewise, appellate courts have struck down non-disloyalty declarations as a condition for public housing tenancy. One of the latest cases is *Lawson v. Housing Authority of Milwaukee,* 270 Wisc. 269, 70 N.W. (2d) 605 (certiorari denied, 350 U.S. 882), in which the Wisconsin Supreme Court, in a *unanimous* opinion, held unconstitutional such a declaration. The Court there compared the purpose of such a requirement and the circumstances presented with that in the *Douds* case and concluded:

> ". . . It is beyond our power to comprehend how the evil which might result from leasing units in a federally aided housing project to tenants who are members of organizations designated subversive by the Attorney General is in any way comparable in substantiality to that which would result to the general welfare through Communists in control of labor organizations disrupting commerce by calling strikes to carry out Communist Party policy. This Court deems the possible harm which might result in suppressing the freedom of the First Amendment outweigh any

threatened evil posed by the occupation by members of subversive organizations of units in federally aided housing projects. . . ." (70 N.W. (2d) at p. 615[6]; 270 Wisc., at pp. 287-288.)

2. No other legitimate purpose for the provisions in issue has been stated or identified justifying an infringement on free speech.

In the cases of *Danskin v. San Diego Unified School District,* 28 Cal. (2d) 536, and *Lawson v. Milwaukee Housing Authority,* 270 Wisc. 269, 70 N.W. (2d) 605, supra, there was lacking any demonstrable danger to the community or to any public interest from the advocacy of the proscribed doctrines and we have an exactly parallel situation here.

However, the majority below suggests that there are other all-encompassing interests "with which the state is concerned and which it is attempting to promote by granting exemptions from taxation. Included, is the interest of the state in maintaining the loyalty of its people, thus safeguarding against its violent overthrow by internal or external forces". (R. No. 382, pp. 51-52.)

In effect, the majority is saying that all tax exemptions are granted in part, at least, to promote loyalty and that the provisions here in issue are designed to prevent stultification of this purpose.

The majority below states (R. No. 382, p. 52):

". . . Obviously, a program of tax exemption designed to promote adherence to the principles of

[6]See also unanimous decision in *Chicago Housing Authority v. Blackman* (1954), 4 Ill. (2d) 319, 122 N.E. (2d) 522.

> our government, but constrained to include within its bounty persons or organizations actively advocating subversion and the support of enemies in time of hostilities would be wholly without reason and result in its own defeat. . . ."

The court below is obviously wrong on this point. There is no over-all purpose encompassing all tax exemptions. They were all granted for entirely different purposes as we will discuss more fully later. If we are to accept the majority's premise, then we must say that the objective of fostering loyalty must equally encompass not only veterans but also, cemeteries,[7] fruit and nut growing trees,[8] growing crops,[9] and surviving heirs.[10]

Consideration of these other exemptions and situations is perfectly permissible, since "proof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas." (*Thornhill v. Alabama,* 310 U.S. 88 at p. 97.)

In any case, it is a little unclear how loyalty is fostered by requiring a cemetery to file a non-disloyalty declaration, or a farmer to file one because he is growing fruit and nut-bearing trees or some other crop.

However, even the very laudable motive of promoting loyalty is limited by the First Amendment. It

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[7]Article XIII, Section 1(b), California Constitution.
[8]Article XIII, Section 1, California Constitution.
[9]Article XIII, Section 12¾, California Constitution.
[10]Revenue and Taxation Code, Section 13801, et seq.

was held by this Court that a compulsory pledge of allegiance could not be exacted from school children even for the purpose of promoting loyalty, unless some substantial danger to the state required it. (*West Virginia State Board of Education v. Barnette,* (1943), 319 U.S. 624, 633.)

No such substantial danger has been indicated or even alluded to in the instant case.

3. The real and sole purpose of the provisions here involved is penalization.

Actually, the *real* reason for denying exemptions to advocates of these proscribed doctrines is not the contentions made by the majority below at all, but rather, the one found in the argument to the voter, where it states "this will have the effect of hitting such persons or organizations in the pocketbook."[11] In other words, it is a form of penalization, purely and simply. Article XX, Section 19 has *nothing,* whatever, to do with negating the purposes of exemptions previously granted. It is based entirely on the theory that people who advocate these doctrines should not receive any special benefit from the state because they should be punished in every way possible.

This was clearly recognized in the public housing oath case of *Lawson v. Milwaukee Housing Authority,* (1955), 270 Wisc. 269, 70 N.E. (2d) 605. The Wisconsin Supreme Court specifically noted that one of the prior housing cases which was subsequently

[11]See Arguments to the Voters lodged with the record of *First Unitarian Church v. County of Los Angeles,* October Term, 1957, No. 382.

overruled (*Rudder v. United States,* 105 A. (2d) 741, rev. in 226 Federal (2d) 51), was based on "the theory that public housing is a privilege which need be made available only to 'loyal tenants'." (70 N.W. (2d) at p. 613.) The court rejected this reason as being a sufficient basis for denying the privilege of public housing tenancy since this denial indirectly infringed on freedom of speech and assembly.

This was also clearly recognized by the California Supreme Court in the case of *Danskin v. San Diego Unified School District,* (1946) 28 Cal. (2d) 536, even though that opinion preceded *American Communications Association v. Douds,* 339 U.S. 382, supra. There, too, it was recognized that the legislature was not at all concerned with the danger of speech by advocates of forceful overthrow of the government since they were still free to advocate elsewhere, nor with the danger to the public forum program under the Civic Center Act. Likewise, the court there concluded:

> "When one searches deeper for the reason that motivates the prohibition of such meetings, there is no escaping the conclusion that the Legislature denies access to a forum in a school building to 'subversive elements' not because it believes that their public meetings would create a clear and present danger to the community, but because it believes the privilege of free assembly in a school building *should be denied to those whose convictions and affiliations it does not tolerate.*" (Emphasis added.) (28 Cal. (2d) at p. 575.)

In the instant situation, it is clear there is no guarding against any danger as may be seen from the fact

that veterans who have property in excess of $5,000.00 are not taxed and, therefore, are not penalized in any way, in the event that they advocate these proscribed doctrines. All exemptees who refuse to sign the declaration required by the implementing legislation are still free to remain at large and operate although under an economic burden.

In the light of the above discussion, we submit free speech may not be infringed merely for the purpose of withholding a valuable benefit from those deemed "disloyal" where there is no reasonable relation to preventing any danger to the country or to some vital interest. Nor do the government employment cases in any way detract from this conclusion, since in no United States Supreme Court case has there been upheld a denial of government employment on the grounds that the state may withhold a privilege from "those whose convictions and affiliations it does not tolerate." In each case, it is clear that the denial of government employment was predicated on the right of the state to protect the integrity of the public service, or the right of the state to know certain information deemed relevant because of the particular employer-employee relationship. (See *Garner v. Board of Public Works,* 341 U.S. 746.)

Free speech may not be infringed *unless* it is necessary to prevent a substantial evil. *West Virginia State Board of Education v. Barnette,* 319 U.S. 624, held free speech may not be infringed even to promote patriotism. If the answer were otherwise, then the doors would be open to bar advocates of these or

other proscribed doctrines or those who refuse to say whether they advocate these doctrines from municipally owned busses, municipally owned libraries, state-financed school books, municipally owned water and power, or for that matter, even police protection. For the argument could be made by proponents of the constitutional amendment, why should we provide police protection for those who seek to destroy this country by their advocacy? On this basis, why should not the services of a policeman answering a call of distress be made dependent upon whether or not a citizen advocates proscribed doctrines? That this extension of the principle sounds ridiculous is only further proof of the ridiculousness of the principle itself.

D. Freedom of Speech Is Abridged by the Arbitrary Denial of Tax Exemption to Advocates of the Proscribed Doctrines, or to Those Who Refuse to State Whether or Not They So Advocate, Under the Doctrine of Unconstitutional Conditions.

We have demonstrated above that freedom of speech is abridged where it strikes at advocacy unrelated to some grave danger to the state or to some equally overriding consideration. However, the court below states that:

> ". . . (T)he limitation on speech is a conditional one, imposed only if a tax exemption is sought; . . . and that not one of the fundamental guarantees but only a privilege or bounty of the state is withheld if the exemption claimant prefers to engage in the prohibited criminal advocacy . . . " (R. No. 382, p. 53.)

This argument has a ring of familiarity to it. In fact, this seems to have been the position of every

government agency in all of the cases involving test oaths which have been before the courts. However, this Court has refused to decide cases by means of such a facile generalization or to engage in a sophistical argument on the difference between a "right" and a "privilege". As Mr. Justice Frankfurter said in his concurring opinion in *Garner v. Board of Public Works*, 341 U.S. 716, 725: "To describe public employment as a privilege does not meet the problem."

In *Wieman v. Updegraff*, 394 U.S. 183, the Court said on page 191:

> " . . . We are referred to our statement in *Adler* that persons seeking employment in the New York public schools have 'no right to work for the State in the school system on their own terms, *United Public Workers v. Mitchell*. They may work for the school system upon the reasonable terms laid down by the proper authorities of New York.' 342 U.S. at 492. To draw from this language the facile generalization that there is no constitutionally protected right to public employment is to obscure the issue . . . "

This court, thus, has avoided becoming involved in a semantic discussion, but, instead, has decided cases in far broader terms, mindful of its role in balancing vital interests going to the very heart of our society.

In *American Communications Association v. Douds*, 339 U.S. 384, 94 L. Ed. 925, the Court noted the governmental agency argument:

> "The Board (NLRB) has argued on the other hand that Section 9(h) (the non-Communist oath) presents no First Amendment problem because its

sole sanction is the withdrawal from non-complying unions of the 'privilege' of using its facilities." (p. 389.)

However, the court would not accept this contention and stated on page 393:

"By exerting pressures on unions to deny offices to Communists and others identified therein, Section 9(h) undoubtedly lessens the threat to interstate commerce, but *it has the further necessary effect of discouraging the exercises of political rights protected by the First Amendment.*" (Emphasis added.)

It is conceded that the state is empowered to tax all property in the state and, for that matter, most property other than United States property and other exceptions not here involved. The state, likewise, is empowered to grant exemptions. The state, having granted a tax exemption to all veterans, as a class, for their past honorable service in the armed forces, may not discriminate by taking it away arbitrarily from some of them where there is no reasonable basis for the classification. (*Missouri ex rel. Gaines v. Canada,* 305 U.S. 337, 349; see *Marsh v. Alabama,* 336 U.S. 501.)

"... Nor can it make the privilege ... dependent on conditions that would deprive any members of the public of their constitutional rights. A State is without power to impose an unconstitutional requirement as a condition for granting a privilege even though the privilege is the use of state property ... "

Danskin v. San Diego Unified School District, 28 Cal. (2d) 536, 545.

The California Supreme Court went on in the *Danskin* case to knock out the loyalty oath for the use of school buildings in the following terms, on page 546:

> "Since the state cannot compel 'subversive elements' directly to renounce their connections and affiliations, it cannot make such a renunciation a condition of receiving the privilege of free assembly in a school building. Such a condition is as unconstitutional as the condition that a foreign corporation pay a tax for the privilege of doing business that could not otherwise be constitutionally imposed on it (*Western Union Telegraph Co. v. Kansas,* 216 U.S. 1), or agree to abstain from resort to the federal courts (*Terral v. Burke Construction Company,* 257 U.S. 529), or the condition that a public carrier obtain a certificate of public convenience and necessity before using the public roads (*Frost v. Railroad Commission of California,* 271 U.S. 583)."

In the case of *Frost v. Railroad Commission of California,* 271 U.S. 583, the Court posed the question before it in these terms:

> "The naked question which we have to determine, therefore, is whether the state may bring about the same result (converting private carriers into public carriers against their will) by imposing the unconstitutional requirement as a condition precedent to the enjoyment of a privilege, which without so deciding we shall assume to be within the power of the state altogether to withhold if it sees fit to do so?" (p. 592.)

The court answered its own question in words which are equally applicable to the legislation here involved:

"May it stand in the conditional form?

"If so, constitutional guarantees so carefully guarded against direct assault, are open to destruction by the indirect but no less effective process of requiring a surrender, which though in form voluntary, in fact lacks none of the elements of compulsion. Having regard to the form alone, the act here is an offer to a private carrier of a privilege, which the state may grant or deny, upon a condition which the carrier is free to accept or reject.

"It would be a palpable incongruity to strike down an act of state legislation which by words of express divestment, seeks to strip the citizen of rights guaranteed by the Federal Constitution, but to uphold an act by which the same result is accomplished under a guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold."

To a similar effect is *Hannegan v. Esquire, Inc.* (1946), 327 U.S. 146, 156, and the dissents of Mr. Justice Brandeis and Mr. Justice Holmes in *United States ex rel. Milwaukee Social Democrat Publishing Co. v. Burleson,* 225 U. S. 407, 421-423, 430-432, 437, 438.

An analogous rule should apply equally to this situation because, if, as the majority below contends, advocates of these doctrines are as free to speak without the benefit of the tax exemption, then in effect, these advocates are paying a tax to speak, a tax which is as deadly in its effect on free and open discussion as the denial of postal privileges at less than cost.

"The First Amendment prohibits all laws abridging freedom of press and religion, not merely

some laws *or all except tax laws.*" (Dissenting opinion, *Jones v. Opelika,* 316 U.S. 584, 609; majority decision vacated and reversed, in 319 U.S. 103.) (Emphasis added.)

In all of the public housing oath cases, the governmental housing authorities had argued that there was merely a privilege involved which might be granted or withheld by the government on any basis it wished and that tenants might be evicted for refusing to sign a non-disloyalty declaration. The appellate courts uniformly held against this contention.[12] For example, in *Chicago Housing Authority v. Blackman,* (1954), 4 Ill. (2d) 319, 122 N.E. (2d) 522, 524, the Illinois Supreme Court, in an unanimous decision, forcefully rejected this argument and said:

> *"The argument, in other words, is that because the tenants have no legal right to occupy the housing accommodations, they cannot be deprived of any constitutional right by the requirements in question. The position is untenable.* A similar contention was rejected in *Wieman v. Updegraff,* 344 U.S. 183 . . . Even though appellants have no right to remain as tenants of appellee, they may not as a condition of continued occupancy be required to comply with unconstitutional conditions." (Emphasis added.)

The constitutional amendment and the oath requirement seek to impose an unconstitutional condition in

[12] *Lawson v. Housing Authority of Milwaukee,* 70 N.W. (2d) 605, 270 Wisc. 269, certiorari denied 350 U.S. 882; *Rudder v. United States,* 226 F. (2d) 51 (CA DC 1955); *Kutcher v. Housing Authority of City of Newark,* 119 A. (2d) 1, 20 N.J. 181; *Chicago Housing Authority v. Blackman,* 122 N.E. (2d) 522, 4 Ill. (2d) 319.

requiring applicants for tax exemption to renounce beliefs and speech constitutionally protected. Here the public welfare and safety remains at precisely the same level whether appellants or those who do advocate the forceful overthrow of the government or support of a foreign government have a tax exemption or not.

Concededly, tax exemptions are privileges granted by the state. Yet, the Fourteenth Amendment still clearly controls the legislative classification. This Court stated the following rule with regard to tax exemptions in the case of *American Sugar Refining Co. v. Louisiana,* 179 U.S. 89:

> "The act in question does undoubtedly discriminate in favor of a certain class of refiners, but this discrimination, if founded upon a reasonable distinction in principle is valid.
>
> "Of course, if such discrimination were purely arbitrary, oppressive or capricious and made to depend upon differences of color, race, nativity, religious opinions, political affiliations, *or other considerations having no possible connection with the duties of citizens as taxpayers,* such exemption would be pure favoritism, and a denial of equal protection of the laws to the less favored classes." (p. 92.) (Emphasis added.)

We must re-emphasize that we are not here concerned with the situation where the proscribed advocacy by guarantees of tax exemptions presents any clear and present danger.

E. The Enactments Here at Issue Present a Substantial Infringement on Freedom of Speech and Assembly in Affecting the Rights and Liberties of All California Residents and Organizations.

The constitutional provision is mandatory in its terms. It denies any tax exemption to any person or organization which advocates the proscribed doctrines. The mere fact that a declaration of non-advocacy has not as yet been required from all persons or organizations receiving any exemption should not obscure the fact that all residents of the State of California are within the purview of the constitutional amendment.

It seems fairly clear that all residents of California, young or old, are the recipients of some type of tax exemption.

All individuals have either a personal income tax exemption of $2,000., if single, or $3,500., if married, plus exemptions of $400. for each dependent.[13] It is true that taxpayers do not have to file returns unless their gross income exceeds these exempted amounts.[14] However, that does not obviate the fact that all persons with any income at all come under the provisions of the constitutional provision since they do receive some exemption, whether or not they are required to file a return. Even at that the Statistical Abstract of the United States shows (p. 371) that in 1956, 4,598,000 income tax returns were filed by Californians.

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[13] California Revenue and Taxation Code, Section 17181.
[14] Revenue and Taxation Code, Section 18401.

In addition, California had 4,290,000 households in 1955.[15] The California Constitution (Article XIII, Section 10½) provides for a $100. property tax exemption for every householder in the State. The Abtract further shows (p. 628) that in 1954 there were 123,000 farms in this state: (Article XIII, Section 1 of the California Constitution exempts from taxation all growing crops in the state.)

The annual report of the California State Board of Equalization for 1955-1956, pp. 58-59, lists as the number of veterans who filed claims for exemption in the state in 1956 as 1,028,995. This, of course, does not include the number of veterans who failed to file claims for exemption either because they were opposed to the provisions here at issue or for some other reason. The report also indicates that there were 11,113 church exemptions during the same year. In addition, there are inheritance tax exemptions and gift tax exemptions, as well as sales and use tax exemptions in California. For many of them, returns do not have to be filed until a certain gross amount is reached. However, that does not negate the fact that all exemptions of whatever kind come under the provisions of Article XX, since the majority below has held that Article XX is self-executing in and of itself.

Therefore, these enactments affect the free speech of almost all individuals in California, even though there has not been a showing of clear and present dan-

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[15]California—*Selected Economic Growth Projections to 1975*—Prepared by Stanford Research Institute for California State Chamber of Commerce, February 15, 1958.

ger from tax exemptees as a group. In the case of *American Communications Association v. Douds,* 339 U.S. 382, this Court clearly indicated that merely because an expurgatory oath can be demanded in one particular situation, as in that case from just a few individuals, was no reason to assume that it could be demanded from the populace as a whole. For the court said:

> "Section 9(h) touches only a relative handful of persons leaving the great majority of persons of the identified affiliations and beliefs completely free from restraints . . ."

If Article XX is upheld here, it will mean that the State of California has the right to exact from every citizen in this state an affidavit similar to the one required by Section 32, before any individual can claim any exemption at all. Certainly, it cannot be said that such an adventure into mass testing by oath is an insubstantial infringement on the rights of the people.[16]

F. These Provisions Abridge Freedom of Speech and Assembly by Imposing a Prior Restraint in That the Language of These Acts Is Vague and Uncertain in Its Terms.

This Court has not yet determined whether the peacetime advocacy of the support of a foreign government in the event of hostilities is within or without the scope of the free speech clause of the First Amendment, or whether it violates the "vice of

[16] Cf.: Majority below states in R. No. 382, p. 53: ". . . It is obvious, therefore, that by no standard can the infringement upon freedom of speech imposed by section 19 of article XX be deemed a substantial one . . ."

vagueness" rule. The majority opinion of the court below barely touched on this clause. The major reason for this readily suggests itself—there are simply no cases interpreting the phrase "advocacy of the support of a foreign government against the United States in the event of hostilities." Thus, there is a clean slate.

It is clear that this clause covers peacetime advocacy, i.e., advocacy occurring right now. The penalty of deprivation of tax exemption is placed on advocates or those who refuse to say whether they advocate what position should be taken in the event of hostilities—an eventuality which might never occur. Therefore, this advocacy cannot possibly be considered an incitement of any kind. (*Yates v. United States,* 354 U.S. 298.)

It is true that Section 3 of the Espionage Act of 1917 (Act of June 15, 1917, c. 30, 40 Stat. 217, as amended by Act of May 16, 1918, c. 75, Sec. 1, 40 Stat. 553) imposes penal sanctions on "Whoever shall by word or act support or favor the cause of any country with which the United States is at war, or by word or act oppose the cause of the United States therein . . ."

However, there certainly is a big distinction between such a wartime measure and a peacetime measure of the kind which is involved herein.

The phrase here in question also has some similarity to the language in the Sedition Act (1 Stat. 596) of 1798, another peacetime measure which made it a crime to, "Aid, encourage or abet any hostile de-

signs of any foreign nation against the United States, their people or government."

However, the repeal of the Sedition Act prevented any consideration by this Court as to its validity.

In order to avoid duplicate briefing, we will herein adopt the further discussion of this point set forth in the Petitioners' Consolidated Opening Brief in the companion cases of *First Unitarian Church v. County of Los Angeles* (O.T. 1957, No. 382) and *Valley Unitarian-Universalist Church, Inc. v. County of Los Angeles* (O.T. 1957, No. 385).

II.

THESE PROVISIONS VIOLATE DUE PROCESS IN THAT THE MEANS CHOSEN BEAR NO REASONABLE RELATION TO THE ENDS SOUGHT TO BE ACHIEVED.

A. Denying a Tax Exemption Does Not Reasonably Protect the State or Nation Against Violent Overthrow or Conquest, nor Harm to Its Revenue Raising Program.

It is fully recognized that First Amendment rights, as indeed, all other constitutional rights, must in some instances (the exception rather than the rule) yield to the right of the state or the federal government to protect some very substantial interest of the community. But it is equally true that a law may not infringe on such rights as freedom of speech, unless the law is vitally necessary and the infringement is directly related to preventing the evil sought to be met by the statute.

> "... (A)ny attempt to restrict those liberties must be justified by clear public interest, threatened,

> not doubtfully or remotely, by clear and present danger. *The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice.* These rights rest on a firmer foundation." (Emphasis added.) (*Thomas v. Collins*, 323 U.S. 516, 530.)

Here, the majority below has stated the primary purpose of the provisions at bar as follows:

> ". . . It may properly be said that the primary purpose of the people of the state in the enactment of section 19 of article XX was to provide for the protection of the revenues to the state from impairment by those who would seek to destroy it by unlawful means . . ." (R. No. 382, p. 41.)

From this statement of the purpose, it would appear that the majority below are not talking about protecting the state and nation from violent revolution or subjugation of the nation by a foreign power, although we must confess we are not completely sure, for the majority below at a later point seemed to hold that the legislation here involved had the same objective as the Smith Act, which was held valid in *Dennis v. United States*, 341 U.S. 494.

If that is the case, then of course we are concerned with the propriety of the means chosen to protect the country and the fundamental rule of due process as to whether the means chosen is reasonably related to the end sought. If the majority are not talking about forcible revolution or armed combat, then how

can it rationally be said that there is danger to the revenues of the state from tax exemptees? They are not in the position of collecting taxes. They have no access to funds. They are not in the State or County Treasurers' offices. They don't have their hands in the till. If the purpose is to protect the tax revenues of the state, then what of the advocates of these doctrines who file no loyalty oath, but still automatically receive an income tax exemption and a householder's exemption?

If, however, the purpose is to prevent overthrow of the state itself, then why is the advocate of these doctrines who pays the tax left otherwise untouched? Just what is accomplished by denying advocates of the proscribed doctrine their tax exemption? Are they any less dangerous? If the danger is that by reason of the tax exemption they have more money in their pocket to accomplish their evil ends, then reasonably, they should not be allowed to work or earn wages. If there is a danger from such advocacy, the advocate should be jailed, and not merely required to pay higher taxes.

It should seem fairly clear that neither of the provisions involved here are designed to really protect the country against any danger to either the government structure itself or to the tax revenues of the state, by reason of violent overthrow or hostile enemy action.

B. The Provisions Here in Issue Have No Reasonable Relationship to the Different Purposes for the Various Tax Exemptions.

In determining whether due process has been violated here and whether the provisions at issue have any relationship to a proper legislative end, there are two purposes to be considered: One, the purpose of the tax exemptions themselves; and two, the purpose of the provisions here at issue.

1. Each tax exemption was created for a different reason.

The State Supreme Court in the majority opinion in the court below states:

> ". . . There are additional interests with which the state is concerned and which it is attempting to promote by granting exemptions from taxation. Included is the interest of the state in maintaining the loyalty of its people and thus safeguarding against its violent overthrow by internal or external forces. This legitimate objective is sought to be accomplished by placing in a favored economic position, and thus, to promote their well being and sphere of influence, those particular persons and groups of individuals who are capable of formulating policies relating to good morals and respect for the law." (R. No. 382, pp. 51-52.)

The court goes on to say that the reason for the church exemption is "to inculcate principles of sound morality, leading citizens to a more ready obedience to the laws . . . The same may be said of others enjoying tax exemptions, notably veterans, . . . colleges . . . and charitable organizations . . . which, together

with church groups, occupy positions whereby they may exert a salutory influence on the moral well-being of the community . . ." (R. No. 382, p. 52.)

The majority below seems to have selected the exemptions it cites with care, in order to fit into a pattern having some relationship to the alleged purpose of the provisions at issue here. Actually, each of the various exemptions granted by the state (and there are a great number of them) were granted to accomplish wholly different and varied purposes.

The veterans' exemption, as stated in the majority opinion in the *Prince* case at bar was granted, in part, "in consideration for services in the public interest and welfare, and as encouragement to others to follow their examples." (R. 66.) It might also be said that the veterans' exemption was also designed to give an economic boost to veterans of limited means, because of the feeling that their wartime service placed them at an economic disadvantage. This may be seen from the fact that the veterans' exemption is limited to those who own less than $5,000 worth of property. It is highly doubtful that it has the additional purpose of fostering patriotism, since it is not restricted to *citizens,* but is granted to all *residents* of the State of California.[17]

On the other hand, exemptions granted to growing crops,[18] fruit and nut-bearing trees[19] are for the purpose of promoting agriculture in the state and to

[17]California Constitution, Article XIII, Section 1¼.
[18]California Constitution, Article XII, Section 1.
[19]California Constitution, Article XIII, Section 12¾.

prevent a heavy economic burden falling on farmers while their return for their investment in time, money and effort is only problematical.

The exemption for cemeteries was granted for a purely practical reason. The state had no means of enforcing tax liens and judgments against cemeteries, because there were no buyers for real property which contained dead bodies. Therefore, the practical solution was simply to exempt cemeteries from taxes.[20]

The personal income tax exemptions of $2,000.00 to single individuals and $3,500.00 to married couples were granted because of our reliance on the theory of a graduated and progressive income tax structure which holds that a certain minimal income is utilized to pay for the necessities of life and should be exempted from taxation; and secondly, that those who can best afford to pay taxes should bear the greater costs of the tax burden above and beyond these minimal amounts.[21]

The householders' exemption was granted because it was too much trouble to collect taxes for such a minor amount as $100.00 of personal property.[22]

In addition, there are the following tax exemptions which are granted for somewhat similar reasons as those for the personal income tax exemptions:

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[20]See 24 So. Cal. L. Rev. 252, 278.

[21]Revenue and Taxation Code, Section 17181.

[22]California Constitution, Article XIII, Section 10½.

Inheritance Tax Exemptions	Revenue & Taxation Code Section
1. Specific exemptions ($50 to $24,000, depending on relationship of transferee to decedent	13801 et seq.
2. Marital exemption	13805
3. Previously taxed property exemption	13821
4. Charitable exemption	13841
5. Intangibles exemption	13851
6. Insurance exemption	13721 et seq.

Gift Tax Exemptions	Revenue & Taxation Code Section
1. Annual exemption $4,000 per donee)	15401
2. Specific exemption (Same as for inheritance tax)	15421 et seq.
3. Charitable exemption	15441 et seq.
4. Intangibles exemption	15451
Sales Tax Exemption	6351 et seq.

In contrast to the varied and wholly different purposes for these tax exemptions, where is that single, unified purpose of Article XX, encompassing all of these exemptions?

The fatal fallacy in the reasoning of the majority below is in forgetting its own admonition that Article XX applies to *all* exemptions, and in assuming that it relates only to the particular exemption involving the parties before the court, i.e., either the church or the veterans' exemption. We must again point out that Article XX covers all exemptions which would include such diverse ones as we have set forth above, such as growing crops, fruit and nut-bearing trees, cemeteries, personal income tax,

household and even inheritance tax exemptions. None of these other exemptions have any such purpose as that suggested for churches and veterans, and since Article XX is self-executing and applies to all exemptions, the contention of the majority below would seem to be a make-weight one.

Where, then, is the necessary relationship between the constitutional provision and the purposes of all the different tax exemptions? It simply does not exist.

III.

DUE PROCESS IS VIOLATED BY DENYING TAX EXEMPTIONS FOR A MERE REFUSAL TO SIGN THE DECLARATION WITHOUT ANY EVIDENCE OR SHOWING OF ADVOCACY OF THE PROSCRIBED DOCTRINES.

As we have demonstrated, supra, the purpose of Article XX, Section 19, is purely and simply that of penalization. However, that does not end our problem. Even assuming arguendo that the classification of Article XX, Section 19, is a valid one, in dividing taxpayers into two groups—advocates and nonadvocates of the proscribed doctrines, still we are left with the very vital question of determining which individuals or organizations fall into the penalized class. May the state rely on an *expurgatory oath* as provided by the implementing legislation as a means of making such a determination? We submit the answer to this question *must* be in the negative because of its subversion of the presumption of innocence.

As we have pointed out, the constitutional amendment covers all residents of the state, for everyone has a personal income tax exemption or householders' exemption. Could the state make it a requirement for receiving these or any exemptions that each resident of the state sign an affidavit that he is not guilty of any crime? After all, using the reasoning of the taxing authorities, giving exemptions to criminals negates the purposes of the exemptions, or even using the real reason for Article XX, Section 19, why should we give special benefits to people who break our laws? —"Let's hit them in the pocketbook." To paraphrase the words of the argument to the voters, "No right-thinking person should object to making a declaration that he is not a (criminal) before receiving such exemptions from the state." But even assuming the validity of such reasoning *arguendo,* may we validly determine who are criminals among our entire citizenry by means of an expurgatory oath? For if we can determine who are criminals by means of an expurgatory oath in order to deny tax exemptions, there is no reason why it cannot be used as a basis for determining who should be imprisoned. What is essentially wrong with such a scheme, so simple and forthright?

The fatal and dangerous error in such a scheme is that it violates the presumption of innocence and rules of evidence which are the foundation of our Anglo-Saxon tradition of law. This would be the very act of inversion of the judicial process that was held to be violative of the Constitution in *Cum-*

mings v. Missouri, 4 Wall. (U.S.) 277, 18 L. Ed. 356. There the court said:

> "The clauses in question subvert the presumptions of innocence, and alter the rules of evidence, which heretofore, under the universally recognized principles of the common law, have been supposed to be fundamental and unchangeable. They assume the parties are guilty; they call upon the parties to establish their innocence, and they declare that such innocence can be shown only in one way—by an inquisition, in the form of an expurgatory oath, into the conscience of the parties." (18 L. Ed. at p. 364.)

There are certain instances, it is true, where the Government has the right to exact information as to the state of mind or loyalty of individuals and may even use an expurgatory oath. However, as *American Communications Association v. Douds,* 339 U.S. 382, supra, pointed out, these situations are limited both as to circumstances and as to the number encompassed. In *Douds,* the method was permissible because of the great danger to interstate commerce posed by advocates of these doctrines holding positions of great power in labor unions. Another situation in which this method of determination has been upheld has been in the field of government employment, as indicated by *Garner v. Board of Public Works,* 341 U.S. 716, supra. This is not because any inference is drawn but because the governmental body has the right to certain information.

In such situations there is no inference drawn nor is the presumption of innocence inverted, but the

individual fails to qualify for public office for failing to give relevant information to his employing agency and because of the peculiar relationship between a public employee and the Government which requires that loyalty be an implied condition of the hiring contract. Similar considerations explain why attorneys, as members of the bar, may be required to take expurgatory oaths or give information. (*In re Summers,* 325 U.S. 561; *In re Anastoplo,* 3 Ill. (2d) 471, 121 N.E. (2d) 826; cf. *Koenigsberg v. State Bar,* 353 U.S. 252; *Sheiner v. State* (Fla.), 82 So. (2d) 607; *In re Ellis,* 282 N.Y. 435, 26 N.E. (2d) 967; *In re Grae,* 282 N.Y. (2d) 428, 26 N.E. (2d) 963.

Here, however, we have a situation involving the public at large with no substantial interest of the state sufficiently great or sufficiently endangered to justify the abandonment of the presumption of innocence which is and should be the general rule.

In the *Douds* case, the United States Supreme Court clearly indicated that, merely because an expurgatory oath can be demanded in that particular situation from just a few individuals, was no reason to assume that it could be demanded from the populace as a whole.

There is a further reason why the presumption of innocence should not be subverted here. In every government employee case such as *Garner v. Board of Public Works,* supra, and *American Communications Association v. Douds,* 339 U.S. 382, supra, in the field of interstate commerce, there were legislative findings that some individuals in the positions of concern engaged in the proscribed advocacy.

With the record barren as it is of any contention that the respondent here, or any of the taxpayers in the companion suits now pending advocate these proscribed doctrines, Section 32 of the Revenue and Taxation Code must fall, since refusal to state that a person or group does not advocate the proscribed doctrines is not proof that they do so advocate.

IV.

THE ENACTMENTS VIOLATE THE EQUAL PROTECTION CLAUSE TO THE FOURTEENTH AMENDMENT IN ARBITRARILY AND DISCRIMINATORILY DENYING TAX EXEMPTIONS TO SOME APPLICANTS WHILE GRANTING THEM TO ALL OTHERS IN SIMILAR CIRCUMSTANCES.

A. Section 32 Is Invalid in Excluding Householders From Its Provisions in Violation of Article XX.

The Constitutional Amendment, Article XX, Section 19, specifically states: "No person or organization . . . shall receive *any* exemption from *any* tax imposed by this state, or *any* county (or other political subdivision)."

Yet Section 32 of the Revenue and Taxation Code which was supposedly passed pursuant to the constitutional amendment provides that:

> "Any statement, return, or other document in which is claimed any exemption, *other than the householder's exemption* from any property tax . . . shall contain a declaration . . ."

There is no authority for the legislature to make any such exception. They are bound by the terms of the constitutional amendment, whose manifest purpose was to deny *any* tax exemption to all advocates of certain proscribed doctrines.

A rather interesting effect of this legislative tampering is that although veterans who failed or refused to file the nondisloyalty declaration were denied the veteran's exemption, they would still receive the householder's exemption of $100.00.[23] and the personal income tax exemption of $2,000 if single, or $3,500 if married.[24]

The majority below, however, states that the legislature was acting perfectly proper in excluding householders from filing the declaration, because, "it could also take into account the fact that the segment of householders in this state is so overwhelmingly large compared with others chosen for exemption that the cost of processing them would justify their separate classification." (R. No. 382, p. 45.) However, Justice Carter, in his dissenting opinion, knocks this argument on the head (R. No. 382, p. 81):

> "If this class is so 'overwhelmingly large,' it would appear that the old adage, 'in numbers lies strength' is true, that this class should also be required to take the oath prior to claiming exemption. It would also appear that mere difficulty in 'processing' would be of little moment in an undertaking thought to be so vitally necessary. Furthermore, if the principle behind the oath is, as we are told, to prevent those dangerous persons from depleting the state's revenue, it would appear that this 'overwhelmingly large' class might, even though the exemption is a relatively small one, deplete it even more than the revenues from those which fall within legislation."

[23] California Constitution, Article XIII, Section 10½.

[24] Revenue and Taxation Code, Section 18401 et seq.

The exclusion of the householder's exemption was undoubtedly made by the legislature because it was felt that requiring all householders to file a loyalty oath would be an unbearable financial burden on the state. Unfortunately, the legislators are caught in a web of their own fashioning. It was they who drafted and initiated the constitutional amendment stating that *no exemption* be given to individuals or organizations who advocate these proscribed doctrines. The people of the state adopted the constitutional amendment. If it is constitutional, then certainly the legislature at this late date does not have the power to amend the constitutional amendment by a mere legislative act and exclude householders.

B. The Implementing Legislation Is Invalid as Discriminatory Legislation in Not Requiring Loyalty Oaths From All Individuals and Organizations Who Receive Tax Exemption.

The Legislature adopted implementing legislation pursuant to the mandatory provision of the Constitutional Amendment's directive. This, however, covered only property tax exemptions (Revenue and Taxation Code Section 32[25]) and corporation income tax exemptions (Revenue and Taxation Code Section 23705[26]). *Not* covered were many other tax exemptions provided in the laws of California, including personal income tax exemptions (Revenue and Taxation Code Section 18401), gift tax exemptions (Revenue and Taxation Code Sections 15401-15451), inheritance tax exemptions (Revenue and Taxation Code Sections 13801-13873), exemptions for free pub-

[25]Calif. Stats. 1953 c. 1503, p. 3114, Sec. 1.
[26]Calif. Stats. 1953, c. 1503, p. 3115, Sec. 2.

lic libraries, free museums, growing crops, and property used exclusively for public schools (California Constitution, Article XIII, Section 1), and sales tax exemptions (Revenue and Taxation Code Sections 6351-6403).

The majority below in holding that the Legislature could utilize different means for different classes of tax exemptees confuses the issue. The majority below stated:

> "If the exclusion of householders from the requirement of Section 32 renders that section void as discriminatory or lacking in uniformity, it would seem to follow that the entire Revenue and Taxation Code with reference to procedures to qualify for exemptions would be void for the same reason. But, obviously, no such claim is made."

This is true. We concede the fact that the Legislature may require applicants for only certain types of exemptions to file claims prior to getting their exemptions, as was held in *Chesney v. Byram*, 15 Cal. (2) 460, 465. However, the difference in procedures is because there are differences in exemptions. Some exemptions may only require filing an initial application. Other exemptions may require filing yearly affidavits or returns. Other exemptions may be granted as the householder's without filing anything. But that is simply because there are differences in exemptions.

However, this does not apply to an overall category, such as is set forth in Article XX, which provides that *no* person or organization which advocates the

proscribed doctrine shall receive any tax exemption. It would appear that there should be only one method for making a determination of that overall qualification.

If some claimants for some tax exemptions have to file a nondisloyalty declaration, it would seem, logically, that all claimants for tax exemptions should have to file the same. Even if we were to concede that a distinction may be drawn between those who presently file yearly claims for exemption and those who do not, it would appear that all claimants for yearly exemptions should have to file the same sort of nondisloyalty declaration as required by Revenue and Taxation Code Sections 32 and 23705.

C. The Constitutional Amendment, in Denying Any Exemption to Aliens, Violates the Equal Protection Clause.

As far as can be determined, no tax exemption of the State of California prior to the passage of the enactments in issue was restricted to citizens.

Discrimination against aliens as such is forbidden by the due process and equal protection clauses of the Fourteenth Amendment for they both state that *no person*, not just citizens, shall be deprived of equal protection of the law or life, liberty or property without due process of law. (*Truax v. Raich*, 239 U.S. p. 33.)

The second part of the oath prohibits granting *any exemption* to persons who advocate the support of a foreign government against the United States in the event of hostilities. This would have the effect of depriving every alien who has not applied for United

States citizenship of any tax exemption for no other reasons than his alienage.

It is logical and understandable to assume that any alien in this country who does not move to become a United States citizen retains his allegiance to his native land and in the event of hostilities between the United States and that country, would be bound to support his native land.

We are not just discussing the case of individuals supporting Russia in the event of hostilities, which in the context of today's world affairs, most rapidly rises to mind. We are talking about English citizens (after all, we did fight two wars against England), French citizens, even Mexican and Canadian citizens from our very friendly border countries.

The effect of this amendment is to deny the personal income, inheritance, sales or any other tax exemptions to aliens, even including diplomatic representatives in this country.

Denying aliens rights accorded others, simply because they are aliens, violates the equal protection clause of the Fourteenth Amendment. (See *Truax v. Raich*, 239 U.S. 23, supra, and *Takahashi v. Fish and Game Commission*, 334 U.S. 410.)

While the states may make reasonable classifications for purposes of taxation and the granting of exemptions, an unreasonable or arbitrary classification in this area is invalid under the equal protection and due process clauses of the Fourteenth Amendment.

> "The equal protection clause, like the due process of law clause, is not susceptible of exact delimita-

tion . . . It does not, however, forbid classification; and the power of the state to classify for purposes of taxation is of wide range and flexibility, provided always, that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike'."[27]

Louisville Gas and Electric Company v. Coleman, 277 U.S. 32, 37.

V.

THE PROVISIONS HEREIN IN ISSUE VIOLATE THE SUPREMACY CLAUSE OF THE CONSTITUTION IN ATTEMPTING TO REGULATE AND RESTRICT SEDITION, A FIELD ENTIRELY WITHIN THE PROVINCE OF THE FEDERAL GOVERNMENT, AND WHICH THE CONGRESS OF THE UNITED STATES, BY LEGISLATIVE ENACTMENTS, HAS PREEMPTED AND WHOLLY OCCUPIED.

In this area of relations with foreign governments, the national government clearly has supreme control. Even without the principle of preemption, it would seem that any restriction on what individuals can say concerning a foreign government and its relation to the United States should fall within a federally controlled area. But we need not rely on this alone. This legislation and constitutional amendment are in conflict with congressional action and national policy. Congress has passed several laws covering our relations with foreign governments. Title 22, U.S.C.A., entitled "Foreign Relations and Intercourse", con-

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[27] *Air-Way Electrical Appliance Corporation v. Day* (1924), 266 U.S. 71, 85; *F. S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415.

tains a special chapter, "Foreign Agents and Propaganda" (Chapter 11), which is under the direct control of the Department of Justice. In Title 18, U.S. C.A., Sections 2381-2390, another chapter, No. 115, deals with treason, sedition and subversive activities, and covers the only types of peacetime advocacy which are proscribed and which are in any manner penalized, that of advocating the overthrow of the government of the United States or any state by force and violence. (18 U.S.C.A. 2385.) It is to be noted there is no proscription of advocacy during peacetime of the support of a foreign government in the event of hostilities. This would not appear to be accidental. Thus, the federal government does make such advocacy a crime, even though there is a comprehensive sedition law on the books.

The case of *Pennsylvania v. Nelson*, 350 U.S. 497, held that Congress had intended to occupy the field of seditious utterances to the exclusion of any parallel state legislation. Our nation has grown great by allowing unrestricted discussions and advocacies in this area. There may be reasons during wartime to place limitations on speech when the nation marshals all of its power for the immediate task at hand. There are dangers in so doing; but whatever the rationale is for limiting speech during wartime, those circumstances do not exist which warrant making such a limitation during peacetime. Congress, we submit, was well aware of this, and, therefore, avoided penalizing in any way the advocacy which is being penalized in the second clause of the measures involved herein. Thus, this constitutional amendment and implement-

ing legislation are in direct conflict with federal legislation and national policy which cannot be lightly brushed aside.

It is to be noted that there is not even a mention in this clause of the State of California. Contrast this with the sedition law in the *Nelson* case, supra. There it may be recalled, Pennsylvania made it a crime to advocate the overthrow of the United States government *or the State of Pennsylvania;* but still that was not sufficient to save that legislation from invalidity because of federal preemption. As the court said on page 420:

> "Congress having thus treated seditious conduct as a matter of vital national concern, it is in no sense a local enforcement problem. As was said in the court below: 'Sedition against the United States is not a *local offense.* It is a crime against the *Nation.*' "

Where Congress has so clearly spoken that it is occupying the field of sedition and seditious utterances, it can mean nothing else than a warning to the states to keep hands off this very vital and sensitive area which should not be handled in any patchwork fashion.

CONCLUSION.

For all of the above-stated arguments, this Court is hereby requested to declare null and void the Constitutional Amendment, Section 19 of Article XX of the Constitution of the State of California as well as Revenue and Taxation Code Section 32 and reverse the decisions of the Court below.

There has been a veritable blizzard of loyalty oaths in recent times. And instead of making the country more secure, each new one seems to increase our insecurity. This Court has a rare opportunity—an opportunity to apply the standard of sanity and reason in a field that, probably more than any other in our law today, cries for the reapplication of such a standard.

The problem of test oaths is not a new one in this country. In the eruption of the American Revolution, there, too, we saw arise the same feelings of insecurity that have arisen in the post World War II years. Throughout the colonies there was a general scrutiny of loyalty. Formal test oaths were passed in substantial numbers.

> "Failure to sign was followed by political, legal and civil disabilities; by disarming and imprisonment; by special taxation—one of the oddest cures for disloyalty ever tried."
>
> C. H. Van Tyne, *Loyalists in the American Revolution.*

When the perils of the war passed, cooler heads prevailed. It is to be earnestly hoped that we will not repeat the mistakes of earlier times. The problem of test oaths has recurred throughout our entire history, yet logic and the realization of their unreliability has ultimately prevailed. It was stated succinctly and well by Justices Douglas and Black in their concurring opinion in the case of *West Virginia State Board of Education v. Barnette,* 319 U.S. 624 on page 644:

> ". . . the test oath has always been abhorrent in the United States. Words uttered under coercion are proof of loyalty to nothing but self interest."

This is an opportunity to reaffirm the calm judicial principle set forth by a unanimous Supreme Court speaking through Chief Justice Hughes in *DeJonge v. Oregon,* 299 U.S. 353, 365:

> "The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speach, free press, and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

Dated, San Francisco, California,
February 21, 1958.

Respectfully submitted,

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(Appendix Follows.)

Appendix

California Veterans' Property Tax Exemption: California Constitution, Article XIII, Sec. 1¼:

The property to the amount of $1,000 of every resident of this State who has served in the Army, Navy, Marine Corps, Coast Guard or Revenue Marine (Revenue Cutter) Service of the United States (1) in time of war, or (2) in time of peace, in a campaign or expedition for service in which a medal has been issued by the Congress of the United States, and in either case has received an honorable discharge therefrom, or who after such service of the United States under such conditions has continued in such service, or who in time of war is in such service, or who has been released from active duty because of disability resulting from such service in time of peace or under other honorable conditions, or lacking such amount of property in his own name, so much of the property of the wife of any such person as shall be necessary to equal said amount; and the property to the amount of $1,000 of the widow resident in this State, or if there be no such widow, of the widowed mother resident in this State, of every person who has so served and has died either during his term of service or after receiving an honorable discharge from said service, or who has been released from active duty because of disability resulting from such service in time of peace or under other honorable conditions, and the property to the amount of $1,000 of pensioned widows, fathers, and mothers, resident in this State, of soldiers, sailors

and marines who served in the Army, Navy, Marine Corps, Coast Guard or Revenue Marine (Revenue Cutter) Service of the United States shall be exempt from taxation; provided, this exemption shall not apply to any person named herein owning property of the value of $5,000 or more, or where the wife of such soldier or sailor owns property of the value of $5,000 or more. No exemption shall be made under the provisions of this section of the property of a person who is not a legal resident of the State; provided, however, all real property owned by the Ladies of the Grand Army of the Republic and all property owned by the California Soldiers Widows Home Association shall be exempt from taxation.

California Constitution, Article XX, Section 19:

Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

(a) Hold any office or employment under this State, including but not limited to the University of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State; or

(b) Receive any exemption from any tax imposed by this State or any county, city or county,

city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.

The Legislature shall enact such laws as may be necessary to enforce the provisions of this section.

California Revenue and Taxation Code, Section 32:

Property Tax Exemption claims; loyalty statements. (Calif. Stats. 1953, c. 1503, p. 3114, Sec. 1).

Any statement, return, or other document in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State shall contain a declaration that the person or organization making the statement, return, or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such a declaration, the person or organization making such statement, return, or other document shall not receive any exemption from the tax to which the statement, return, or other document pertains.

Any person or organization who makes such declaration knowing it to be false is guilty of a felony. This section shall be construed so as to effectuate the

purpose of Section 19 of Article XX of the Constitution.

Revenue and Taxation Code, Section 23705:

Sec. 23705. Loyalty declaration for Tax Exempt Corporations. (Calif. Stats. 1953, c. 1503, p. 3115, Sec. 2.)

Any statement, return, or other document in which is claimed any exemption allowed by this article shall contain a declaration that the organization making the statement, return, or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such declaration, the organization making such statement, return, or other document shall not receive any exemption allowed by this article. Any organization which makes such declaration knowing it to be false is guilty of a felony. This Section shall be construed so as to effectuate the purpose of Section 19 of Article XX of the Constitution.

If not otherwise required to do so, any organization claiming to be exempt under this article shall annually, on or before March 15th, file a statement, return, or other document establishing its right to the exemption and containing the declaration set forth in the last paragraph.

United States Constitution:

Amendment 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 14 (Adopted July 28, 1868). Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article VI.

(Cl. 2) This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.